MOTION FILED
NOV 14 1990

(6)

No. 89-1817

IN THE

Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE, et al.

Petitioners,

v.

DONALD LEE McLAUGHLIN, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE COUNTY OF LOS ANGELES and SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY IN BEHALF OF PETITIONERS

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CONTENTS REPRODUCED FROM FURNISHED PRETYPED COPY.

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The County of Los Angeles is a political subdivision of the State of California. [1] It is responsible for a Municipal Court System with 24 separate courts, one of which has 7 branches, and 187 judges, and a Superior Court system with a Central Criminal Court, eleven (11) branches and 238 judges, spread throughout the County. Arraignments and attendant probable cause hearings are usually held in the municipal court system.

Sherman Block is the Sheriff of Los Angeles County. As such, he is an officer of the County [2] whose duties include arresting and taking before Magistrates all persons who have committed a public offense, [3] taking charge of the County

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[1] California Constitution; Article XI; California Government Code sections 23000, 23002, 23003.

[2] California Government Code section 24000(b).

[3] California Government Code section 26601.

jail and the prisoners in it, [4] and transporting prisoners to and from the jails. [5] As is shown by this case, the Sheriff may be sued by a criminal defendant who claims that he has not received a probable cause determination in a timely manner. In Los Angeles County, the Sheriff operates five(5) jails, plus jails in each of 23 stations, which, at any one time, house approximately 23,000 inmates.

The Sheriff's Department has more than 8000 sworn deputies and conducts approximately 115,000 arrests per year. There is a much heavier incidence of crimes and arrests on weekends and holidays than on weekdays.

Los Angeles County covers approximately 4,000 square miles with a

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[4] California Government Code Section 26606, Penal Code Section 4000, et seq.

[5] California Government Code section 26747.

population of approximately 8,171,000. It contains 86 municipalities, 47 of which have their own police force and many of which have their own jails. The Sheriff provides direct law enforcement in the unincorporated area of the county and in those cities which have contracted for the service.

The County of Los Angeles and Sherman Block, as its elected Sheriff, bear the burden of balancing fiscal, security, constitutional and public policy concerns as they meet their obligation safely to detain large numbers of pretrial detainees and short term sentenced inmates in an enormous and largely urban setting.

In the County of Los Angeles, as in the County of Riverside, this difficult balancing process has been affected by Federal court intervention at the behest of inmates or classes of inmates.

Any determination by this Court which addresses the proper reach of Federal

constitutional standards for confinement of pretrial detainees or of probable cause hearings will necessarily affect the dynamic within which our correctional system, and those of other cities and counties across the state, must set priorities and allocate resources.

For these reasons, the County and Sheriff which have long and intensive experience with the implementation and operation of arrests, bookings, detention and probable cause hearings, and which must oversee and regulate a complex, urban correctional system and municipal court system within the context of Federal constitutional standards, respectfully request leave to present their views concerning the appropriateness of the decision below requiring that a probable cause determination be made before a Magistrate within thirty-six (36) hours of arrest. The County and Sheriff will not review the legal issues so thoroughly and

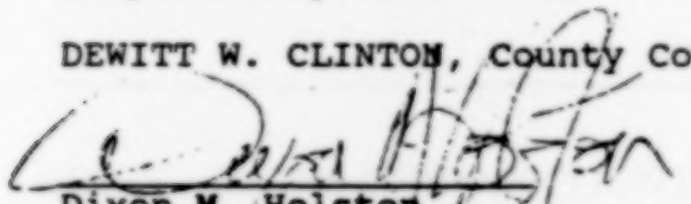
ably addressed by the parties. They seek more to elucidate issues essential to judging whether the California Rule, as established by the State Supreme Court and Statute, of holding the hearing at arraignment, within two (2) days after arrest, is justified and reasonable, by reference to their unusual expertise and experience.

WHEREFORE, the County and Sheriff respectfully move that the attached brief amicus curiae be accepted and filed with the Court. [6/]

Dated: November 14, 1990

Respectfully submitted,

DEWITT W. CLINTON, County Counsel



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Counsel of Record for Amicus Curiae

[6/] Consent to the filing of a brief of an amicus curiae need not be had when the brief is presented by a state or a political subdivision of a state.

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TABLE OF CONTENTS

		Page
STATEMENT OF INTEREST OF COUNTY OF LOS ANGELES AND SHERMAN BLOCK, SHERIFF OF LOS ANGELES COUNTY AND SUMMARY OF ARGUMENT		1
ARGUMENT		
I.	**CALIFORNIA CASE LAW AND STATES REGARDING THE TIME WITHIN WHICH A PROBABLE CAUSE DETERMINATION MUST BE MADE ARE IN ACCORD WITH GERSTEIN AND SHOULD BE UPHELD.....**	4
II.	**THERE IS A NEEED FOR UNIFORMITY AS TO THE TIME LIMITS FOR A PROBABLE CAUSE DETERMINATION WITHIN THE COURTS AND JAILS OF THE 58 COUNTIES AND WITHIN LOS ANGELES COUNTY WHICH SUGGEST THAT THE CALIFORNIA LAW SHOULD BE UPHELD....**	8
III.	**THE CALIFORNIA LAW AS TO TIME LIMITS FOR PROBABLE CAUSE DETERMINATIONS SHOULD BE UPHELD AS IT GRANTS GREATER RIGHTS TO MIS-DEMEANOR ARRESTEES THAN IS MANDATED BY GERSTEIN.**	10
IV.	**CONCLUSION .....**	13

TABLE OF AUTHORITIES

Cases	Page
Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed. 2d 54 (1974)	4, 5, 10
In Re Walters 15 Cal.3d 738, 126 Cal.Rptr. 239, 543 P.2d 607	5, 6, 12
Youngblood v. Gates, 100 Cal. App.3d 1302, 1313, 246 Cal.Rptr. 776	7

Statutes

California Government Code	
Section 23000	1
Section 23002	1
Section 23003	1
Section 24000(b)	1
California Penal Code	
Section 822	6
Section 825	6
Section 991	6

Constitution

United States Constitution	
Fourth Amendment	4
Article XI	1

STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

The County of Los Angeles (hereinafter "County") is a political subdivision of the State of California.[1] Sherman Block is the Sheriff of Los Angeles County (hereinafter "Sheriff") and an officer of the County.[2]

The County is responsible for the budget, staffing, facilities, administrative positions, security, etc. for the Superior Court of Los Angeles County, with its central criminal courts facility and eleven (11) branches and a municipal court system with 24 separate courts, one of which has seven (7) branches.

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[1] California Constitution, Article XI; California Government Code sections 23000, 23002 and 12003.

[2] California Government Code section 24000(b).

The views and experience of the County and the Sheriff may be useful in the resolution of the issues before the court in the following respects: First, the California time rules were established in response to, and in accord with the Gerstein, infra, mandates and are reasonable; second, the California time rules provide a uniformity in probable cause determinations throughout the courts fo the state which is desirable; and, third, the California rules give even greater rights to misdemeanors arrestees then were mandated by Gerstein, infra, and should be upheld.

The County and the Sheriff are placed in a very awkward position by the McLaughlin decision. No two jail systems or court systems are alike, and the needs and capabilities of each differ. The Court and Sheriff are complying with the law of the state on the time within which they are providing probable cause

determinations, they are vulnerable to being sued in federal court for failure to provide the determination within a reasonable time, as to any one of their many jails and/or courts under the McLaughlin theory. Further, separate trials could produce separate "reasonable time limits" for each of the many jails and courts. This result would be virtually unworkable in view of the many jails, courts and great numbers of prisoners. If decisions similar to McLaughlin were arrived at with respect to the Los Angeles County jails and courts, arrangements would have to be made to open courts, transport prisoners, provide security, drastically alter jail routines, etc., on holidays and weekends. The Court's experience with night courts shows that the expense for each court to be opened would be equivalent to funding an entire new court. This would be exclusive of the cost and burden to the Sheriff.

This court place an extreme cost and burden on an already overburdened and under funded system.

ARGUMENT

I

CALIFORNIA CASE LAW AND STATUTES REGARDING THE TIME WITHIN WHICH A PROBABLE CAUSE DETERMINATION MUST BE MADE ARE IN ACCORD WITH GERSTEIN AND SHOULD BE UPHELD.

First, the California rules with respect to the time within warrantless arrestees must be given a probable cause determination were established as a good faith response to the decision of this Court in Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d. 54 (1974). In the face of Florida law which would often delay such a determination more than thirty (30) days after arrest, the Court held that the Fourth Amendment requires a

judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, and that the determination must be made either before or promptly after arrest. Gerstein, supra, p. 114 and 125.

The California Supreme Court, out of respect and concern for the decision of this Court in Gerstein, accepted and decided a case later that year which case could otherwise have been considered moot. In Re Walters 15 C 3d. 738, 743-4, 126 Cal.Rptr. 239,543 P. 2d. 607. Consistent with Gerstein, it held that, unless waived, a judicial determination of probable cause is required in every case where a defendant charged with a misdemeanor is detained awaiting trial, and that the determination is to be made at the time of arraignment or bail setting which usually takes place simultaneously within two (2) days after arrest.

Walters, supra, p. 747 and 750; California Penal Code sections 822 and 825.

Penal Code section 825 provides in relevant part as follows:

> "The defendant must in all cases be taken before the magistrate without unnecessary delay, and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following . . ."

Penal Code section 991, enacted in 1980, provides that an in custody misdemeanor defendant has a right to a

probable cause determination at the time he appears before the magistrate for arraignment. Lastly, certain police agencies tried to extend the time limit by interpreting the two days as 48 hours. Under this reasoning, if a defendant were arrested on a Tuesday evening, the 48 hours would expire Thursday evening. Since no court was in session in the evening, the time would be extended through Friday. It was held that this interpretation violated the defendant's rights, that "two days" means "two days", and that under the example above, the defendant must have his hearing by the end of the day on Thursday. Youngblood v. Gates, 100 Cal.App.3d 1302, 1313, 246 Cal.Rptr. 775. (Petn. for Review denied August 18, 1988). In other words, the California courts and legislature have attempted in good faith to apply Gerstein in a fair and uniform manner, and to resist any efforts to erode its doctrine.

II

THERE IS A NEED FOR UNIFORMITY AS TO THE TIME LIMITS FOR A PROBABLE CAUSE DETERMINATION WITHIN THE COURTS AND JAILS OF THE 58 COUNTIES AND WITHIN LOS ANGELES COUNTY WHICH SUGGEST THAT THE CALIFORNIA LAW SHOULD BE UPHELD.

Secondly, there should be a uniform rule in a County as large and complex as Los Angeles, and in a state as large and complex as California. If the McLaughlin decision is upheld, there could be trials as to what constitutes a reasonable time for the probable cause determination not only in every county in California, but as to every jail and court system in every county. With different courts interpreting facts from differing agencies, there might well be holdings that 36 hours is reasonable in Riverside,

48 hours as to Los Angeles central jail, 28 hours as to Long Beach jail, 51 hours in San Francisco, etc. Further, each venue could be retried every time counsel thought they perceived a reason for a changed-time requirement. Would there be a different time for a Friday/Saturday/ Holiday arrest, when the frequency of crime and arrests are higher, than for a weeknight? Shall there be a lower time requirement for an arrestee in Beverly Hills, where the incidence of crime is low, than for an arrestee in South Central Los Angeles, where the number of arrestees is higher? Such a result, on its face, would be chaotic, and should not be countenanced by this court. The writ of certiorari should be granted.

III

THE CALIFORNIA LAW AS TO TIME LIMITS FOR PROBABLE CAUSE DETERMINATIONS SHOULD BE UPHELD AS IT GRANTS GREATER RIGHTS TO MISDEMEANOR ARRESTEES THAN IS MANDATED BY GERSTEIN.

Lastly, the California law in applying the Gerstein mandate should be supported as giving the in-custody misdemeanor arrestee greater rights than were required by Gerstein. In Gerstein, this court approved an "informal procedure" in determining probable cause, and held that adversary safeguards at this stage such as right to counsel, confrontation and cross-examination were not required, Gerstein, supra, p. 119-122. Further, this court recognized that different approaches would be approved.

". . .We recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure, and the mature of the probable cause determination usually will be shaped to accord with a State's pretrial procedures viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer, (citation), or the determination may be incorporated into the procedure for setting bail or fixing other of pretrial

release. . ." Gerstein, supra, p. 123-124.

The California courts and legislature have implemented Gerstein by linking the probable cause determination to the arraignment, which in turn must be done within two (2) days. They have added rights not required by Gerstein as follows: Gerstein hearing required even when misdemeanor suspect is arrested on a warrant; right to counsel at hearing; right to be present at hearing. Walters, supra, p. 749-750.

In summary, it is submitted that the uniform two (2) day rule throughout the state is reasonable, and that the speculative benefit of any minor reduction in this time which might be possible in individual courts is far more than offset by the additional rights, such as right to counsel, given to the misdemeanor arrestee.

IV.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: November 14, 1990

Respectfully submitted,

DEWITT W. CLINTON
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Counsel of Record for Amicus Curiae